

SECRET

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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IRVING SCHOENFELD, MORGAN  
MARKETING LTD.,  
RUSS LAND and BRIAN BEAVERS,

Plaintiffs,

- against -

XO COMMUNICATIONS, INC., HENRY R.  
NOTHHAFT, DANIEL FRANCIS AKERSON,  
JEFFREY S. RAIKES, SANDRA J. HORBACH,  
CRAIG O. MCCAWE, NATHANIEL A. DAVIS,  
NICOLAS KAUSER, SHARON L. NELSON,  
JOSEPH L. COLE, DENNIS M. WEIBLING,  
PETER C. WAAL, FORSTMANN LITTLE & CO.  
and TELEFONOS DE MEXICO S.A. DE C.V.,

Defendants.  
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Hon. Geoffrey J. O'Connell

Index No. 01-018358

**STIPULATION OF COMPROMISE AND SETTLEMENT**

This Stipulation of Compromise and Settlement (the "Stipulation") is made and entered into as of this 11<sup>th</sup> day of July 2002, by and between Plaintiffs in the above-captioned class action, on behalf of themselves and all other members of the Class (as defined below), and XO Communications, Inc., by their respective attorneys.

WHEREAS, on November 28, 2001, XO entered into a non-binding term sheet with the Investors (as defined below), with respect to an \$800 million investment in XO Communications, Inc. ("XO"), conditioned on, among other things, a substantially deleveraged balance sheet, and the following morning announced publicly the material terms and conditions of the proposed investment (the "Proposed Transaction"); and

WHEREAS, between December 5, 2001 and December 11, 2001, Plaintiffs, stockholders of XO, filed three class action complaints against XO and its directors and the Investors, on behalf of a class of themselves and all public shareholders of XO (excluding defendants and persons or entities affiliated with them), seeking to enjoin the Proposed Transaction or, alternatively, to rescind the transaction and/or recover damages in the event that the Proposed Transaction were consummated, alleging generally that the Proposed Transaction constituted a breach of fiduciary duty on the part of XO's directors, allegedly aided and abetted by the Investors; and

WHEREAS, on January 15, 2002, XO entered into a binding Stock Purchase Agreement, dated January 15, 2002, by and among XO and the Investors (the "Investment Agreement"), reflecting the terms and conditions of the Proposed Transaction, and subject to satisfaction of a number of conditions, including that certain pending or threatened litigation against XO, the Investors or their respective officers and directors be resolved in a manner satisfactory to each Investor (as defined more fully below, the "Litigation Condition"); and

WHEREAS, by order dated April 5, 2002, this Court ordered that the three complaints filed by Plaintiffs relating to the Proposed Transaction be consolidated, allowing Plaintiffs to file a consolidated amended complaint, and appointed the law firms of Abbey Gardy, LLP and Milberg Weiss Bershad Hynes & Lerach LLP as co-lead Plaintiffs' counsel for the consolidated action; and

WHEREAS, on or about May 23, 2002, Plaintiffs filed their Consolidated Class Action Complaint in the above-captioned action, containing materially the same allegations and seeking materially the same relief as the earlier-filed actions; and

WHEREAS, on June 6, 2002, counsel to the Investors delivered a letter to counsel for XO stating that they considered it "virtually impossible" that the conditions to the Investment Agreement, including the Litigation Condition, would ever be satisfied and asking XO to release the Investors from their obligations under the Investment Agreement, at the same time acknowledging that the Investment Agreement remains in full force and effect; and

WHEREAS, XO, through its counsel, has advised the Investors that it disagrees with the assertion that it is "virtually impossible" that those conditions will ever be satisfied, and has reminded the Investors that the Investment Agreement requires each Investor to "use its reasonable best efforts to take, or cause to be taken, all further actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by the Agreement;" and

WHEREAS, the Investors have advised XO that they intend to avail themselves of any available conditions to their obligations under the Investment Agreement applicable at the time of the closing that would allow the Investors not to complete the transactions contemplated by the Investment Agreement; and

WHEREAS, at present, however, the Investors have not terminated or purported to terminate the Investment Agreement, or asserted that they currently have any right to do so; and

WHEREAS, at the request of the steering committee of its Senior Secured Lenders, XO developed a standalone restructuring plan as a contingency plan, to be implemented if the Investment Agreement were to be terminated, or if XO, after consultation with its Senior Secured Lenders, were to conclude that the Investors will not comply with their obligation to

close under the Investment Agreement upon satisfaction of the applicable conditions thereunder;  
and

WHEREAS, recognizing what it considered to be both the superior financial recovery to creditors offered by the transactions contemplated by the Investment Agreement and the uncertainty engendered by the conditions thereto, on June 17, 2002, XO filed a petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and concurrently filed a proposed plan of reorganization setting forth two alternative restructuring plans: one contemplated by the Investment Agreement and the second the standalone contingency plan supported by the steering committee of XO's Senior Secured Lenders subject to customary approvals; and

WHEREAS, if the Investment Agreement were to be terminated, or XO, after consultation with its Senior Secured Lenders concludes that the Investors will not comply with their obligations to close thereunder upon satisfaction of the applicable conditions, XO presently intends (unless a superior alternative is presented to XO and subject to the approval of the Bankruptcy Court) to consummate the restructuring contemplated by the standalone contingency plan; and

WHEREAS, if XO concludes that the Investors have wrongfully terminated the Investment Agreement, or wrongfully failed to close thereunder, XO may elect to pursue claims in a lawsuit against the Investors for, inter alia, breach of contract, and seek damages and/or specific performance as remedies for said breach; and

WHEREAS, both XO and Plaintiffs believe that such a lawsuit could have substantial value; and

WHEREAS, in light of the significant changes in circumstances since the filing of the initial lawsuits, Plaintiffs, on behalf of themselves and the Class, XO, and its Senior Secured Lenders, consider it in their respective interests that this litigation be promptly resolved so as to facilitate the satisfaction of the Litigation Condition to the Investment Agreement, with a view toward (a) consummating the transactions contemplated by the Investment Agreement and securing for XO and its creditors the superior financial recovery offered by the transactions contemplated thereby; out of which recovery the Senior Secured Lenders will compensate the Class -- at no additional cost to the Investors -- in consideration of Plaintiffs and the Class agreeing to dismiss their claims in this Action; or alternatively (b) providing XO with the basis for a meritorious and potentially valuable cause of action against the Investors should they wrongfully terminate the Investment Agreement or breach their obligations by failing to complete the transactions contemplated thereby notwithstanding satisfaction of the conditions thereto, in which event the Class could also share the benefits of any recovery in consideration of dismissing their claims in this Action; and

WHEREAS, in light of the contingent nature of the recoveries available from either a consummation of the Investment Agreement or a successful lawsuit for breach thereof, XO, the Senior Secured Lenders and Plaintiffs believe it appropriate that, in consideration for Plaintiffs' Class agreeing to settle this lawsuit, the rights of the common shareholders of XO under the standalone contingency plan be vested, clarified and enhanced, to better assure them of a right to purchase equity in the reorganized XO, irrespective of whether XO were to maintain a successful lawsuit for breach of the Investment Agreement by the Investors; and

WHEREAS, the parties have engaged in extensive arm's-length negotiations regarding settlement of the claims asserted in this action; and

WHEREAS, the parties desire to facilitate satisfaction of the Litigation Condition to the Investment Agreement to enable the transactions thereunder to be consummated and the benefits thereunder to be achieved, at the same time providing material and substantial consideration to XO's common shareholders.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, through their respective counsel, that this Action shall be finally settled and resolved on the terms and conditions set forth below and subject to the approval of the Court pursuant to Rule 908 of the Civil Practice Law and Rules and the approval of the Bankruptcy Court:

**A. CERTAIN DEFINITIONS**

*Action* means the above-captioned consolidated action, Irving Schoenfeld and Morgan Marketing, Ltd., Russ Land and Brian Beavers v. XO Communications, Inc. et al., Case No. 01-018358 (N.Y. Sup. Ct., Nassau County).

*Administrative Agent* means Toronto Dominion (Texas), Inc., the Administrative Agent under the Senior Credit Facility.

*Alternative Transaction* means a transaction other than the Investment.

*Bankruptcy Court* means the United States District Court for the Southern District of New York having jurisdiction over the Chapter 11 Case and, to the extent any reference is made pursuant to Section 157 of Title 28 of the United States Code or the General Order of the District Court pursuant to Section 151 of Title 28 of the United States Code, the bankruptcy unit of such District Court.

*Chapter 11 Case* means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court, Case No. 02-12947 (AJG).

*Class* means all persons and entities who were public common shareholders of XO as of June 17, 2002 (except the Defendants and any person, firm, trust, corporation or other

entity related to or affiliated with any of the Defendants) and their successors in interest through the Distribution Record Date.

*Co-Lead Counsel* means the law firms of Abbey Gardy, LLP and Milberg Weiss Bershad Hynes & Lerach LLP, appointed by the Court as Co-Lead Counsel for the Class in the Action.

*Company* means XO.

*Complaint* means the Consolidated Class Action Complaint in the Action dated May 23, 2002.

*Confirmation Date* means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

*Confirmation Order* means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

*Court* means this Court, the Supreme Court of the State of New York, County of Nassau.

*CPLR* means the New York Civil Practice Law and Rules.

*Debtor* means XO, as debtor and debtor in possession in the Chapter 11 Case.

*Defendants* means the defendants in the Action: XO, Daniel F. Akerson, Sandra J. Horbach, Nathaniel A. Davis, Henry R. Nothhaft, Jeffrey S. Raikes, Craig O. McCaw, Nicolas Kauser, Sharon L. Nelson, Joseph L. Cole, Dennis M. Weibling, Peter C. Waal, Forstmann Little and Telmex.

*Delaware Fiduciary Action* means the action captioned Ben Marshall Riley, Stanley Nitzburg, and Milton J. Ayala v. Akerson et al., Del. Ch. Ct., New Castle County, No. 19353.

*Disclosure Statement* means the written disclosure statement that relates to the Plan, as amended, supplemented, or modified from time to time, and that is prepared and distributed in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3018.

*Distribution Record Date* means the Confirmation Date.

*Effective Date* means the first date that each and all of the conditions set forth in Section C of the Stipulation have been satisfied or expressly waived by XO in writing.

*Final Order and Judgment* means the proposed order to be entered approving the Settlement Stipulation substantially in the form attached hereto as Exhibit D.



***Forstmann Little Investors*** means Forstmann Little & Co. Equity Partnership-VII, L.P., a Delaware limited partnership and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P., a Delaware limited partnership.

***Forstmann Little Entities*** means (i) FLC XXIX Partnership, L.P.; (ii) FLC XXX Partnership, L.P.; (iii) FLC XXXI Partnership, L.P. (d/b/a Forstmann Little & Co.); (iv) FLC XXXII Partnership, L.P.; (v) FLC XXXIII Partnership, L.P.; (vi) Forstmann Little & Co. Equity Partnership-V, L.P.; (vii) Forstmann Little & Co. Equity Partnership-VI, L.P.; (viii) Forstmann Little & Co. Equity Partnership-VII, L.P.; (ix) F.L. Fund, L.P.; (x) Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VI, L.P.; (xi) L.P. Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VII, L.P.; and (xii) Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P.

***Forstmann Little*** means Forstmann Little & Co.

***Investment*** means the investment by the Forstmann Little Investors and Telmex as defined in Section 1.1 of the Investment Agreement.

***Investment Agreement*** means that certain Stock Purchase Agreement dated as of January 15, 2002, among XO, the Forstmann Little Investors and Telmex, with respect to XO's sale of the New Investor Common Stock, as the same may be altered, amended, modified or restated from time to time.

***Investor Litigation*** means any claim, cause of action, demand, suit, liability, or recovery, by way of judgment, settlement or otherwise, by XO or Reorganized XO based upon any breach or other failure by one or more of the Investors to consummate the transactions contemplated by the Investment Agreement.

***Investors*** means the Forstmann Little Investors and Telmex, collectively.

***Litigation Condition*** means the condition to the Investors' obligation to close the transactions contemplated by the Investment Agreement set forth at Section 5.2(u) thereof, which requires that any and all Litigation (as such term is defined in the Investment Agreement) pending or threatened against the Company or its Affiliates (as such term is defined in the Investment Agreement), officers, directors, employees, representatives, attorneys and agents, and any and all Litigation pending or threatened against either Investor or its respective Affiliates, officers, directors, managers, partners, members, stockholders, employees, representatives, attorneys and agents, related to the Company, its business, its governance, its securities regulatory disclosure practices, the purchase or sale of any of the Company's equity or debt securities, the Investment (as such term is defined in the Investment Agreement) or the Restructuring Transaction (as such term is defined in the Investment Agreement), shall have been resolved in a manner that is satisfactory to each Investor in its sole discretion, provided, however, that neither Investor shall be able to assert the failure of such condition to be satisfied solely as a result of pending Ordinary Course Litigation (as such term is defined in the Investment Agreement).

***New Reorganization Common Stock*** means, in the event the Stand-Alone Events occur, that certain common stock, par value \$.01, to be issued by Reorganized XO on the Effective Date pursuant to the Plan and the Stand-Alone Term Sheet and any related agreements, as applicable, and having the rights and preferences stated in Reorganized XO's certificate of incorporation as amended by the Plan or in accordance therewith.

***Nontransferable Rights*** mean the rights to purchase, prior to the first business day after the 29th day after the effective date of the Plan, Rights Shares in the Rights Offering, which rights are not transferable and are subject to the priority and allocation rules described in the Plan.

***Other Consideration*** means consideration other than cash or cash equivalents, such as payment in kind and/or exchange of services, and including the value of any commitment by either of the Investors to enter into an Alternative Transaction, provided that in the event that either of the Investors acquires control of the Company as a result of an Alternative Transaction, the value of the commitment in respect thereof shall be measured by the excess, if any, of the equity value of the Company implied by such Alternative Transaction over the value implied by the highest Alternative Transaction at the time reasonably available to XO, including without limitation the transactions contemplated by the Stand-Alone Term Sheet.

***Parties*** means Plaintiffs and XO.

***Plaintiffs*** means the plaintiffs in the Action.

***Plan*** means the chapter 11 plan of reorganization of XO filed with the Bankruptcy Court, including all supplements, appendices and schedules thereto, as the same may be altered, amended or modified from time to time in accordance with the terms thereof.

***Plan Effective Date*** means the Effective Date of the Plan as defined therein.

***Released Parties*** means: (i) the Defendants (ii) the Forstmann Little Entities; (iii) Reorganized XO; (iv) the current and former directors, officers and employees of XO; (v) the Senior Secured Lenders and the Administrative Agent; (vi) the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons), and professionals of the foregoing.

***Reorganized XO*** means XO or any successors thereto by merger, consolidation, or otherwise, on or after the Plan Effective Date.

***Rights Offering*** means the offering of Rights, in the event the Stand-Alone Events occur, pursuant to Exhibit C of the Stand-Alone Term Sheet.

***Rights Shares*** means the 50,000,000 shares of New Reorganization Common Stock to be offered for sale at \$5.00 per share (for an aggregate purchase price of \$250 million) in the Rights Offering.

**Senior Credit Facility** means that certain Credit and Guaranty Agreement, dated as of February 3, 2000, between the Company, as borrower, and the entities identified as the "Lenders" and "Agents" therein, as amended.

**Senior Secured Lenders** means the entities identified as "Lenders" under the Senior Credit Facility and their respective successors and assigns.

**Settlement** means the agreement of settlement embodied in this Stipulation.

**Settled Claims** means all claims, demands, debts, rights, causes of action or liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, including known and Unknown Claims, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, whether under state or federal law, and whether directly, indirectly, derivatively, representatively or in any other capacity, in connection with, based upon in whole or in part, arising out of or relating to any claim that has been or could have been brought in the Action or any of the acts, facts or events alleged in the Action or in connection with, based upon, arising out of or relating to any act or omission, transaction, event or other occurrence taking place on or prior to the Plan Effective Date in any way relating to the Investment Agreement, the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement or this Settlement (excluding any claim against XO to enforce the terms of this Settlement), and including without limitation any claim relating to the commencement, prosecution or settlement of an Investor Litigation or the decision not to commence or prosecute an Investor Litigation.

**Stand-Alone Events** means the occurrence of a Termination Event, the filing by the Debtor of the Stand-Alone Notice with the Bankruptcy Court and consummation of the transactions contemplated by the Stand-Alone Term Sheet and any agreements that would be executed and delivered in connection therewith.

**Stand-Alone Notice** means a notice given by the Debtor, after discussions with the Administrative Agent, and to be delivered to the Administrative Agent, expressing (a) either (i) that the Investment Agreement has been terminated by the Investors or XO or (ii) that XO has concluded that the Investors will not consummate the transactions contemplated by the Investment Agreement, and (b) XO's intention to proceed with the transactions contemplated by the Stand-Alone Term Sheet.

**Stand-Alone Term Sheet** means the term sheet attached as Exhibit C to the Plan

**Stipulation** means this Stipulation of Compromise and Settlement.

**Successful Recovery** means any recovery obtained by or on behalf of XO or Reorganized XO in connection with any Investor Litigation (net of the value of any consideration paid or issued by XO in return), which recovery is final, not subject to return, set-off, counterclaim or other diminution, and whether in the form of cash consideration or Other Consideration or an order for specific performance, including any recovery by way of settlement in anticipation of litigation, or the consummation of any Alternative Transaction with either of the Investors where the equity value of the Company implied by such Alternative Transaction

exceeds the value implied by the highest Alternative Transaction at the time reasonably available to XO, including without limitation the transactions contemplated by the Stand-Alone Term Sheet.

**Successful Recovery Fund** means the amount to be paid to the Class out of any Successful Recovery, in accordance with the terms described below.

**Telmex** means Teléfonos de México, S.A. de C.V., a *sociedad anónima de capital variable* organized under the laws of the United Mexican States.

**Termination Event** means any event whereby (a) the Investment Agreement is terminated by the Investors or XO or (b) XO, after discussions with the Administrative Agent, concludes that the Investors will not consummate the transactions contemplated by the Investment Agreement and delivers the Stand-Alone Notice to the Administrative Agent, with a copy of such notice to be delivered to each of the Investors.

**Unknown Claims** means any and all Settled Claims which any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims, the parties stipulate and agree that, upon the Effective Date, the Class shall expressly waive, and each Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law pursuant to, or which is similar, comparable, or equivalent to, Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Class acknowledges, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims was separately bargained for and was a key element of the Settlement.

**Virginia Federal Action** means the consolidated federal class action captioned In re XO Communications, Inc. Securities Litigation, Civil Action No. 01-1832-A (E.D. Va.), dismissed with prejudice by court order dated May 31, 2002 and motion for reconsideration denied by order dated June 17, 2002, and including the action captioned Tracy Gable v. XO Communications, Civil Action No. 02-656-A (E.D. Va.), dismissed with prejudice by order dated June 4, 2002.

**XO** means XO Communications, Inc., a Delaware corporation.

**B. CONSIDERATION**

**1. RELEASES AND TERMINATION OF THE ACTION**

Upon the Effective Date of this Settlement, Plaintiffs and each member of the Class on behalf of themselves, and their respective predecessors, successors, affiliates, heirs, executors, administrators, successors and assigns, and any persons they represent, shall, by operation of the Final Order and Judgment, with respect to each and every Settled Claim, release and be deemed to release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties. The obligations pursuant to this Stipulation shall be in full and final disposition and dismissal of this Action as against the Defendants.

**2. SETTLEMENT CONSIDERATION TO PLAINTIFFS AND THE CLASS**

As consideration for Plaintiffs and the Class giving the Releases described above and agreeing to a full and final disposition and dismissal of this Action, XO agrees to the Settlement and further agrees as follows:

**(a) If the transactions contemplated by the Investment Agreement are consummated:**

(i) The Senior Secured Lenders shall waive their right to receive the first twenty million dollars (\$20,000,000) in cash interest otherwise payable to them upon consummation of the Plan and Investment, which XO or Reorganized XO, as applicable, shall

pay into escrow on behalf of the Class within seven (7) business days after the later of (a) consummation of the Plan and the Investment; or (b) the date such interest would otherwise be due and payable.

(ii) The \$20,000,000 to be paid and any interest earned thereon shall be referred to as the "Settlement Fund."

(iii) Any sums required to be held in escrow hereunder shall be held by Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") as Escrow Agent for the Settlement Fund. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the funds shall be distributed pursuant to this Settlement Stipulation and/or further Order of the Court. The Escrow Agent shall invest any funds in excess of \$100,000 in short term United States Agency or Treasury Securities, and shall collect and reinvest all interest accrued thereon. Any funds held in escrow in an amount of less than \$100,000 may be held in an interest-bearing bank account insured by the FDIC. The parties hereto agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund.

(iv) All (a) taxes on the income of the Settlement Fund, and (b) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively "Taxes") shall be paid out of

the Settlement Fund, and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior order of the Court.

(v) The Settlement Fund, less any taxes, expenses, costs and attorneys' fees and expenses awarded by the Court shall be distributed on the Distribution Date or as soon thereafter as is practicable to those members of the Class who are public common shareholders of XO on the Distribution Record Date.

(b) **If the Stand-Alone Events or an Alternative Transaction occur:**

(i) **Successful Recovery**

(a) **Cash**

In the event of a Successful Recovery in connection with any Investor Litigation not involving the receipt of Other Consideration by any party, XO or Reorganized XO, as applicable, shall pay or cause to be paid into escrow on behalf of the Class within seven (7) business days after XO's receipt of such Successful Recovery or any cash proceeds out of enforcing such Successful Recovery: (a) thirty three and one-third percent (33 1/3%) of such Successful Recovery up to a maximum Successful Recovery of sixty million dollars (\$60 million), for a maximum payment to the Class of twenty million dollars (\$20,000,000); and in addition (b) three percent (3%) of the gross value of any such Successful Recovery in excess of Sixty Million Dollars (\$60,000,000) (collectively, the "Successful Recovery Fund"). The administration, distribution and tax payments on the Successful Recovery Fund shall be handled in the same manner as set forth above in connection with the Settlement Fund and distributions

therefrom shall be made to those members of the Class who are public common shareholders of XO on the Distribution Record Date.

(b) Other Consideration

In the event that a Successful Recovery involves the receipt of Other Consideration by any party, then two independent investment advisors selected by Plaintiffs and XO, respectively, will agree on a value for the Successful Recovery. If no agreement can be reached between these two investment advisors, such advisors shall mutually agree upon and appoint a neutral advisor to value the Successful Recovery. After the agreement or neutral determination of the value of the Successful Recovery, any amounts owed to Plaintiffs and the Class shall be promptly liquidated (or, at XO's or Reorganized XO's election, the value thereof determined as described above shall be paid in cash by XO or Reorganized XO) and distributed in the same manner and to the same persons or entities as any cash consideration portion of a Successful Recovery; provided, however, that the amounts payable to Plaintiffs and the Class in respect of any Other Consideration portion of a Successful Recovery shall in no event exceed twenty million dollars (\$20,000,000).

(c) Right of Consultation

The Parties recognize that given their interest in any Investor Litigation, Plaintiffs and the Class shall be given a right of consultation regarding strategic decisions in any such litigation, including its commencement, it being further recognized and understood, however, that the decisions as to (i) whether to initiate an Investor Litigation; (ii) selection and retention of counsel for any Investor Litigation; (iii) whether to settle, dismiss, or otherwise terminate any Investor Litigation; and (iv) whether to appeal any determinations in connection with any



Investor Litigation, shall be subject to the sole, exclusive and final judgment of XO or Reorganized XO made in good faith, and neither XO, Reorganized XO nor the Senior Secured Lenders shall be deemed representatives, agents, fiduciaries, partners, or joint venturers of or with Plaintiffs or the Class in connection with any Investor Litigation.

(ii) **Rights Offering**

If the Stand Alone Events Occur, the Plan proposed by XO will contain a Rights Offering of equity securities in Reorganized XO no less favorable to the Class than the following: (i) XO will make a rights offering to its creditors and equity holders of Nontransferable Rights of no less than \$50 million to purchase Reorganized XO Common Stock, (ii) provision will be made to ensure that Nontransferable Rights to invest at least \$16,666,666 are made available to common stockholders on a pro rata basis based on the number of shares held, and, in the event such amount is not taken up in full on that basis, on a pro rata basis based upon subscription request amounts by such common stockholders, (iii) common stockholders shall have the opportunity, on an equal basis with holders of subordinated note and preferred stock claims, to exercise Nontransferable Rights prior to their reversion to holders of senior secured claims pro rata based on subscription request amounts.

**C. CONDITIONS TO EFFECTIVENESS**

The Settlement embodied in this Stipulation shall not become effective until the first date (the "Effective Date") that each and all of the following conditions has been satisfied, unless one or more of such conditions is expressly waived by XO or Reorganized XO in writing. In the event that the following conditions set forth are not satisfied or duly waived, this

Stipulation shall become null and void and of no further force and effect, and the Parties shall be restored to their respective positions existing prior the execution of this Stipulation:

1. Execution

Execution of this Stipulation by Co-Lead Counsel and counsel for XO.

2. Court Approvals and Actions

(a) The entry by the Court of an Order, substantially in the form described in subparagraph (c) below, scheduling a hearing on the fairness of the proposed Settlement and directing the giving of notice to members of the Class;

(b) The entry of a Final Judgment by the Court substantially in the form annexed hereto as Exhibit D approving the Settlement and dismissing the Complaint in this Action on the merits, with prejudice and without costs to any party, except as provided for herein;

(c) As promptly as practicable after the execution of this Stipulation, the Parties shall apply to the Court for the entry of an Order, substantially in the form annexed hereto as Exhibit A:

(i) conditionally certifying, for purposes of this Settlement only, that this Action may proceed as a class action by the named Plaintiffs as class representatives, and by their counsel as class counsel, pursuant to Article 9 of the CPLR defined as follows:

All persons and entities who were public common shareholders of XO as of June 17, 2002 (except the Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) and their successors in interest through the Distribution Record Date.

(ii) designating the law firms of Abbey Gardy, LLP and Milberg Weiss Bershad Hynes & Lerach LLP, as Co-Lead Counsel for the Class.

(iii) scheduling a hearing on the question of whether proposed the Settlement should be approved as fair, reasonable and adequate to the members of the Class, and the amount of fees, expenses and disbursements to be awarded to Plaintiffs' Counsel in the Action;

(iv) approving as to form and content the proposed Notice of Pendency of Class Action, Proposed Settlement and Hearing Thereon (the "Notice") attached hereto as Exhibit B and the Summary Publication Notice (the "Summary Notice") attached hereto as Exhibit C;

(v) directing the mailing of the Notice by first class mail to members of the Class;

(vi) directing the publication of Summary Notice once in the national edition of The Wall Street Journal;

(vii) finding that the mailing and publication of the Notice and Summary Notice pursuant to Sections C. 2 (c) (iv) and 2 (c) (v) of this Stipulation constitute the best notice practicable under the circumstances and is due and sufficient notice of the matters set forth in the Notice to all members of the Class, pursuant to Rule 908 of the CPLR, and that the Notice fully satisfies the requirements of due process and the CPLR;

(viii) empowering Co-Lead Counsel, subject to court order, to supervise and administer the notice procedures set forth above,

(ix) providing that any person or entity who would otherwise be a member of the Class who so desires may exercise the right to exclude him/her/itself from the Class, but only if he, she or it complies with the requirements for so doing as set forth in the Notice;

(x) providing that Defendants shall have no responsibility for the administration of the Settlement or the Settlement Fund or Successful Recovery Fund and shall have no liability to the Class in connection with such administration, except that XO shall use its best efforts to provide Co-lead counsel, or its designated agent, with information necessary to disseminate notice to the current shareholders of XO within five business days of preliminary approval of the Settlement; and

(xi) providing that the costs and expenses associated with the administration of the Settlement, including, without limitation, the costs of identifying members of the Class and the actual costs of publication, printing and mailing notices, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by any claims administrator in connection with providing notice and processing the submitted claims, shall be paid by Plaintiffs and reimbursed out of the Settlement Fund, or in the event there is no Settlement Fund, then such costs and expenses shall be paid by Plaintiffs and reimbursed by XO or Reorganized XO, as applicable, within 45 days after invoicing by Plaintiffs, up to a maximum of \$100,000, and the amount later deducted from any Successful Recovery Fund payable to the Class.

### **3. Bankruptcy Court Approval**

This Stipulation shall be subject to the approval of the Bankruptcy Court.

**4. Other Litigation**

On or before the Effective Date, (a) the dismissal of the Virginia Federal Action shall not have been appealed by plaintiffs in that action, or any appeal shall have been dismissed without the need for any court approval or with such court approval as is necessary; and (b) the Delaware Fiduciary Action shall have been dismissed by plaintiffs in that action without the need for court approval or with such court approval as is necessary.

**5. Effective Date**

The Effective Date shall have occurred on or before September 15, 2002.

**D. ATTORNEYS' FEES AND EXPENSES**

Plaintiffs' Counsel intends to apply to the Court for an award of attorneys' fees, as follows:

(1) If the transactions contemplated by the Investment Agreement are consummated, an amount not to exceed 25% of the Settlement Fund; or (2) if the Stand Alone Events or an Alternative Transition Occur, (a) an amount not to exceed 25% of the Successful Recovery Fund; and (b) the opportunity to exercise Nontransferable Rights in an amount not to exceed 25% of the Rights Shares; and (3) reimbursement of expenses and disbursements (including expert or consulting fees), together with interest, to be paid by Plaintiffs and reimbursed out of the Settlement Fund, or in the event there is no Settlement Fund, to be paid by XO or Reorganized XO, as applicable, up to a maximum of \$100,000 (inclusive of any notice and administration costs and expenses paid pursuant to Section 2(c)(xi)), and later to be deducted from any Successful Recovery Fund payable to the Class. Such attorneys' fees, expenses, and

interest as are awarded by the Court shall be paid from the Settlement Fund or Successful Recovery Fund, as the case may be, to Plaintiffs' Counsel promptly after such award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund or Successful Recovery Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund or Successful Recovery Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed.

**E. NO ADMISSION OF WRONGDOING**

This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

1. shall not be referred to or used against the Defendants or the Class as evidence of wrongdoing by anyone;
2. shall not be construed against the Defendants or the Class as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial.

**F. MISCELLANEOUS PROVISIONS**

1. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

2. This Settlement Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors-in-interest.

3. The administration and consummation of the Settlement as embodied in this Settlement Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Settlement Stipulation.

4. The waiver by one party of any breach or condition of this Settlement Stipulation shall not be deemed a waiver of any other prior or subsequent breach or condition.

5. This Settlement Stipulation and its exhibits constitute the entire agreement among the parties concerning the Settlement, and no representations, warranties, or inducements have been made other than those contained and memorialized in such documents.

6. This Settlement Stipulation may be executed in one or more counterparts and by facsimile. All executed counterparts and each of them shall be deemed to be one and the same instrument.

7. This Settlement Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

8. The construction, interpretation, operation, effect and validity of this Settlement Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law governs.

9. This Settlement Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Settlement Stipulation.

10. All counsel and any other person executing this Settlement Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so (subject, in the case of XO or Reorganized XO or any parties acting on their behalf, to the approval of the Bankruptcy Court) and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Stipulation to effectuate its terms.

11. The parties agree to cooperate fully with one another in seeking Court approval of the Preliminary Order In Connection With Settlement Proceedings, the Settlement Stipulation and the Final Order and Judgment and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court and, as necessary, the Bankruptcy Court.



DATED: July \_\_, 2002

**ABBIEY GARDY, LLP**

By: \_\_\_\_\_  
Mark C. Gardy  
Karin E. Fisch  
212 East 39<sup>th</sup> Street  
New York, New York 10016  
(212) 889-3700

**Co-Lead Counsel for the Class**

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

By: \_\_\_\_\_  
Steven G. Schulman  
U. Seth Ottensoser  
Seth Rigrodsky

One Pennsylvania Plaza  
New York, New York 10119-0165  
(212) 594-5300

**Co-Lead Counsel for the Class**

**WILLKIE FARR & GALLAGHER**

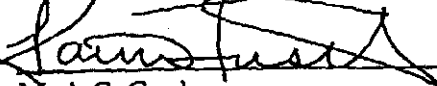
By: \_\_\_\_\_  
Stephen Greiner  
John Oller  
787 Seventh Avenue  
New York, New York 10019-6099  
(212) 728-8000

**Counsel for XO Communications, Inc.**

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DATED: July \_\_, 2002

ABBEY GARDY, LLP

By: 

Mark C. Gardy

Karin E. Fisch

212 East 39<sup>th</sup> Street

New York, New York 10016

(212) 889-3700

Co-Lead Counsel for the Class

MILBERG WEISS BERSHAD  
HYNES & LERACH LLP

By: \_\_\_\_\_

Steven G. Schulman

U. Seth Ottensoser

Seth Rigrodsky

One Pennsylvania Plaza

New York, New York 10119-0165

(212) 594-5300

Co-Lead Counsel for the Class

WILLKIE FARR & GALLAGHER

By: 

Stephen Greiner

John Oller

787 Seventh Avenue

New York, New York 10019-6099

(212) 728-8000

Counsel for XO Communications, Inc.

10677922

DATED: July \_\_, 2002

**ABBEY GARDY, LLP**

By: \_\_\_\_\_  
Mark C. Gardy  
Karin E. Fisch  
212 East 39<sup>th</sup> Street  
New York, New York 10016  
(212) 889-3700

**Co-Lead Counsel for the Class**

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

By: U.S. [Signature]  
Steven G. Schulman  
U. Seth Ottensoser  
Seth Rigrodsky

One Pennsylvania Plaza  
New York, New York 10119-0165  
(212) 594-5300

**Co-Lead Counsel for the Class**

**WILLKIE FARR & GALLAGHER**

By: [Signature]  
Stephen Greiner  
John Oller  
787 Seventh Avenue  
New York, New York 10019-6099  
(212) 728-8000

**Counsel for XO Communications, Inc.**